

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT MARSHALL PLUMMER,

Defendant-Appellant.

UNPUBLISHED

June 3, 1997

No. 189322

Recorder's Court

LC No. 94-008374-FH

Before: Markey, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Defendant was charged with larceny from a person, MCL 750.357; MSA 28.589, and fleeing and eluding a police officer, MCL 750.479a; MSA 28.747(1). Defendant was convicted at his first trial of fleeing and eluding, but the jury could not reach a verdict on the charge of larceny from a person. Subsequently, defendant was retried and convicted upon the larceny charge. Defendant then pleaded guilty to being an habitual offender, third offense, MCL 769.11; MSA 28.1083. Defendant was sentenced to a term of imprisonment from two to ten years. Defendant now appeals as of right. We affirm.

Defendant's claims of error stem from his second jury trial that resulted in his larceny conviction. First, defendant argues that the trial court improperly limited and interfered with defense counsel's cross-examination of key prosecution witnesses. We review an issue regarding whether the trial court improperly limited cross-examination for an abuse of discretion. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995).

We recognize that cross-examination is arguably the most effective, and sometimes the only, tool a defendant has to defend against the charges brought against him. *People v Mumford*, 183 Mich App 149, 153; 455 NW2d 51 (1990). Cross-examination is so critical to a defendant's defense that it is considered a primary interest secured by the confrontation clause. *Id.* However, from our review of the record, we do not find that the trial court impinged upon defendant's right to confrontation.

Defendant's first claim is that the trial court improperly endorsed a prosecution witness when he stated to defense counsel in the presence of the jury, "His testimony is to be accepted and you will not

argue with this witness or any other witness, period. That's just how it goes." We find this argument to be without merit because the record reveals that the trial court's statement was made *after* the jury was excused, and thus defendant was not prejudiced by the remark.

Next, defendant argues that the trial court abused its discretion when it refused to allow defense counsel to measure the width indicated by a witness when he was asked how wide was the counter involved in the robbery, and when it refused to allow defense counsel to publish photographic exhibits to the jury during his cross-examination of prosecution witnesses. We disagree. It is the trial court's responsibility to control the order of trial and procedure. MRE 611(a), MRE 6.414(A). We find no abuse in the trial court's exercise of such control because in each of these instances the jury ultimately had a sufficient opportunity to see and make judgments about the evidence.

Defendant also argues that the trial court continuously interrupted defense counsel's cross-examination of witnesses. Our review of the record indicates that defense counsel repeatedly ignored the trial court's instructions by arguing with witnesses and making editorial comments. We find that the trial court was merely exercising control over the proceedings when it admonished defense counsel for his disregard of its instructions. In fact, the trial court was forced to excuse the jury in order to reprimand both the prosecutor and defense counsel for their unprofessional conduct in the courtroom. Contrary to defendant's assertion, it was defense counsel, not the trial court, who was responsible for the frequent interruptions.

Next, defendant claims that the trial court erred when it disallowed certain testimony. We disagree. The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994). We will find an abuse of discretion only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *Id.*

Defense counsel asked the clerk on duty at the time of the larceny why he (the clerk) was no longer working at the gas station. Defendant's theory of the case was that the clerk actually stole the money from the cash register, then framed defendant for the larceny. Defense counsel asked the clerk whether he was fired from the gas station because he failed to comply with their rules. The trial court sustained the prosecutor's objection to these questions on the grounds that the questions were irrelevant. We agree with the ruling because the only purpose for introducing such testimony would be to show the clerk's poor character and conformity with that poor character on the date of the robbery. MRE 404(b) specifically prohibits the use of evidence of other crimes, wrongs, or acts for such a purpose. The rule is not limited to a criminal defendant's acts, but rather, includes the acts of any person. *People v Rockwell*, 188 Mich App 405, 409-410; 470 NW2d 673 (1991). Substantively, evidence concerning the reasons that the clerk left the gas station's employ would not be relevant to whether defendant committed the instant offense. The trial court properly disallowed defense counsel's questions.

Finally, defendant claims that the prosecutor committed misconduct in his cross-examination of defendant. Specifically, defendant claims that the prosecutor's line of questioning challenging defendant's need for directions in an area he supposedly had lived in for five years was misleading and essentially struck a "foul blow" at defendant. However, because defendant failed to object to the prosecutor's line of questioning, appellate review is precluded in the absence of manifest injustice. *People v Wilson*, 196 Mich App 604, 609; 493 NW2d 471 (1992). Here, we find no manifest injustice because the prosecutor's questions were merely following up on false testimony provided by defendant regarding the length of time he had lived in the area.

Affirmed.

/s/ Jane E. Markey

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra